IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 262 OF 2005

Shri Jeevan Nanji Waghela..... ... Appellant.

Versus

The Municipal Corporation of Greater Mumbai. ... ... Respondent.

Mr. M. D. Mane i/by Mr. K. K. Pandey for the Appellant.

Ms. Geeta Jogalekar for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Heard learned Counsel appearing for the parties.

2. The challenge in this appeal from order is to judgment and order dated 18th January, 2005 passed by the learned trial Judge by which notice of motion for injunction taken out by the appellant / plaintiff has been dismissed.

3. It is not in dispute that the respondent

Corporation has offered to the appellant / plaintiff a temporary accommodation having area of about 146 sq.ft. The case made out by the appellant / plaintiff is that area of the present structure in his possession is 166 sq.ft.

4. The learned trial Judge has recorded a prima facie finding that area in possession of the appellant / plaintiff is 77 sq.ft. Learned Counsel appearing for the respondent on instruction states that the site which was offered to the appellant / plaintiff by the respondent Corporation by letter dated 20th January, 2001 is still available.

5. The learned trial Judge has found that area in possession of the Appellant is 77 sq.ft. According to the appellant area in his possession is 166 sq.ft. and even according to the case of the appellant area of the site offered by the respondent is short only by 20 sq.ft.

6. As the appellant is sufficiently protected by the site offered by the respondent, no case is made out for interference. Dispute regarding exact area of the structure in possession of the appellant and the

entitlement of the appellant to the alternative accommodation will have to be resolved at the trial of the suit.

7. Hence, appeal from order has no merit. Subject to the statement made by the learned Counsel appearing for the respondent, which is recorded above, the appeal is dismissed with no order as to costs.

8. All parties concerned to act on the authenticated copy of this order.

Sd/-

(**A. S. OKA, J.**)

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In view of the dismissal of the Appeal from Order, this Civil Application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)